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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 MARIO M. SHEPARD,

7 Plaintiff,

8 v.

9 DEPT. OF EMPLOYMENT, TRAINING &
10 REHABILITATION, etc.,

11 Defendant.
12

2:05-cv-00791-BES-LRL

REPORT & RECOMMENDATION

13 **BACKGROUND**

14 The plaintiff submitted an Application to Proceed *in Forma Pauperis* and a Complaint pursuant
15 to 42 U.S.C. § 1983 (#1), a Financial Affidavit (#3), and a letter explaining the financial discrepancies
16 between the two documents (#7). The court granted *forma pauperis* status, and leave to amend the
17 Complaint. (Order (#8).) The plaintiff's original Complaint failed to state a claim upon which relief
18 could be granted. Plaintiff filed an Amended Complaint (#10) on May 15, 2006, and has requested the
19 status of his case (#12, filed March 26, 2007).

20 **DISCUSSION**

21 Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a pleading must contain a short and
22 plain statement of the claim showing that the pleader is entitled to relief. Rule 12(b)(6) of the Federal
23 Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which
24 relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *North*
25 *Star Int'l v. Arizona Corp. Comm'n*, 720 F.2d 578, 580 (9th Cir. 1983). In considering whether the
26 plaintiff has stated a claim upon which relief can be granted, all material allegations in the complaint

1 are accepted as true and are to be construed in the light most favorable to the plaintiff. *See Russell v.*
2 *Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). Allegations of a *pro se* complainant are held to less
3 stringent standards than formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520
4 (1972) (per curiam).

5 In his Amended Complaint plaintiff alleges that his rights were violated by the Department of
6 Employment, Training & Rehabilitation Employment Security Division because he is being accused of
7 committing fraud for overpayment of unemployment benefits. The only documentation is a Stipulation
8 and Order Regarding Settlement and Dismissal, (Amended Complaint (#10) 10.), which seems to
9 indicate that Shepard settled his worker's compensation claim for \$8,000.00.

10 Liberally construing the plaintiff's allegations, the court can only surmise that Shepard applied
11 for worker's compensation after this settlement. Thereafter, when the DOE discovered the settlement,
12 it advised that Shepard was not entitled to any further payment, or that he had been overpaid. Shepard
13 states that:

14 My rights were violated by my not understanding what was being asked.
15 I said many times that I didn't understand what was being asked. I said
16 many times that I didn't understand what she was asking to me. She
stated over & over yes or no. I kept saying I don't understand. She
should have explained my rights & allowed me to seek counsel.

17 Shepard was represented by counsel at the time of the settlement. (*See* Amended Complaint
18 (#10) 12.) Again, the court can only surmise that Shepard is referring to the DOE. And, in any case,
19 the court cannot determine who "she" is or what "she" was asking of plaintiff. There is no factual
20 scenario presented to the court upon which relief can be granted. Additionally, plaintiff has failed to
21 enumerate which rights, privileges, or immunities secured by the Constitution or laws of the United
22 States were violated. The Complaint must therefore be dismissed for failure to state a claim upon which
23 relief may be granted.

24 ...

25 ...

26 ...

RECOMMENDATION

Based on the foregoing, it is the recommendation of the undersigned United States Magistrate Judge that plaintiff's Amended Complaint (#10) be dismissed with prejudice.

DATED this 30th day of March, 2007.



LAWRENCE R. LEAVITT
UNITED STATES MAGISTRATE JUDGE